



# **Legal Division Dodd-Frank Act Title II**

---

## **Legal Framework Overview**

**January 25, 2012**

# Overview:

- Title I – Prudential Oversight and Resolution Plans
- Title II – Orderly Resolution Authority
  - 5 Key Elements***
    - Applicability & Appointment
    - Authority for Immediate and Decisive Action
    - Continuity – Bridge Financial Companies & Related Authorities
    - Access to Liquidity
    - Prohibition on Taxpayer Bailouts

# Orderly Resolution Authority: Applicability & Appointment

- **Bankruptcy is Primary Resolution Process**
  - Dodd-Frank is only a fall-back option to mitigate systemic consequences
  - Key Issue: Whether Title II will mitigate systemic risk of a Bankruptcy
- **Limited to Potentially Systemic Financial Companies**
  - Certain BHCs, Designated Financial Companies, or Other Financial Companies (with 85% or more of total consolidated revenues from financial activities)
- **Advance Planning is critical**
- **Special Process to Trigger**
  - Treasury Secretary, in consultation with President, after Recommendation by Board of Governors and Designated Regulator (principally FDIC or SEC)
- **Judicial Review**

# Orderly Resolution Authority: Immediate and Decisive Action

- Immediate authority to operate business, resolve claims, pay creditors, transfer assets & liabilities
- One day stay on derivatives netting – to allow transfers for value
- Statutory priority of distribution provides certainty
- Creditor protections include statutory minimum payment & judicial determination of disputed claims
- Parallels authority under Bankruptcy Code to provide consistency – differences focused on speed of execution, value retention, & mitigation of systemic risks

# Orderly Resolution Authority: Continuity – Bridge Financial Company

- Bridge provides authority to maximize value & mitigate systemic risks by maintaining critical operations
- Temporary FDIC-chartered financial company
- Broad authority to operate business and transfer assets & liabilities
- Broad funding options: cashflow, guarantees & assurances of performance, Orderly Liquidation Fund, and Debtor in Possession Financing
- Flexible resolution options: merger, charter conversion stock sale, or P&A

# Orderly Resolution Authority: Access to Liquidity

- As demonstrated in 2008, immediate liquidity to preserve valuable operations is critical to preserve value and stem systemic consequences
- Title II creates Orderly Liquidation Fund to carry out Title II resolutions
  - All funding must be repaid by receivership, clawback or assessments
- Cannot be used to preserve insolvent financial companies or avoid closure and resolution

# Orderly Resolution Authority: Prohibition on Taxpayer Bail-Outs

- Statutory bar on taxpayer loss – 12 U.S.C. § 5394
- Dodd-Frank expressly:
  - Prohibits taxpayer losses from the exercise of Title II authority
  - Requires unsecured creditors to bear losses under priority system
  - Requires full repayment of OLF from creditors or industry
  - Requires that shareholders receive no payments until all other valid claims are paid
  - Requires FDIC to ensure that senior management and board members responsible for the failure are not retained.